

Exhibit B

7/28/03 Hearing Transcript

Hearing 07-28-03.txt
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PATENT HOLDING COMPANY,

Plaintiff,

-v-

99-76013

DELPHI AUTOMOTIVE SYSTEMS
CORPORATION,

Case Number:

Defendant.

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TELEPHONIC CONFERENCE
BEFORE THE HONORABLE AVERN COHN
United States District Judge
219 U.S. Courthouse & Federal Building
231 Lafayette Boulevard West
Detroit, Michigan 48226
MONDAY, JULY 28TH, 2003

APPEARANCES:

For the Plaintiff:
Thomas Gemmell, Esq.

Richard W. McLaren, Jr., Esq.

For the Defendant:

Steven R. Hansen, Esq.

Court Reporter:
Official Court Reporter

Joan L. Morgan, CSR

Proceedings recorded by mechanical stenography.
Transcript produced by computer-assisted
transcription.

Detroit, Michigan
Monday, July 28th, 2003
(At or about 12:30 p.m.)
(Telephonic Proceeding, in chambers)

THE COURT: All right.

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MR. McLAREN: Your Honor, Richard McLaren, and Tom Gemmell, on behalf of PHC.

MR. HANSEN: Your Honor, Steve Hansen, on behalf of Delphi.

THE COURT: Okay. This conversation is on the record.

I have concluded that based upon the exchange of conversation accompanying Mr. McLaren's letter of July 25, that this will be the last telephone call I will hold with the parties. Hereafter, everything must be done by motion papers. I find in this case the degree of hostility exhibited by the lawyers to each other is the most severe that I've seen in my 23 years of practice -- of sitting on the bench.

Mr. Gemmell, wrote a letter to Mr. Hansen on July 21, summarizing the substance of the July 11 conference. I thought it was an unexceptional letter. That letter relates to my recollection precisely what I said should take place. Delphi could take the deposition of the inventor of the '031 patent. If Delphi wanted other witnesses it wanted to depose and explain what it was looking for from each -- it would have to explain what it was looking for from each of them. This related to inventorship.

I also said that Delphi could not take any depositions of third parties without first filing a motion and obtaining the Court's leave.

I also said that discovery by Delphi relating to the purported inventorship or ownership by third parties was stayed until after the arbitration between Venture and Auto Lift.

I asked Delphi to file a separate paper explaining in detail its invalidity defenses, and I'm going to come back to that in a moment.

PHC was to explain to the Court in a letter the Delphi witnesses it wanted to depose and the testimony it expected to elicit. Finally, I said the effective stay on discovery, deposition discovery may, in fact, deter discovery cutoff date.

Therefore, that date would likely have to be postponed.

I think it was entirely proper for Mr. Gemmell to attempt to memorialize those directions in the letter that he wrote.

Mr. Hansen's response is simply inadequate. I'm not going to say anything more. It was also unprofessional.

Mr. Gemmell's followup letter asking what was inaccurate was not inappropriate. The letter of July 25th from Hansen back was also unprofessional.

That leads to the current motion to compel discovery of Delphi's generic black box bid documents. That motion was -- should not have been filed until after Delphi filed a separate paper explaining in detail its invalidity defenses.

As I see it the motion is anticipating precisely what Delphi will say is its invalidity defense. And until that is clarified, I don't see how PHC can take discovery on an anticipated defense until it knows the nature -- the details of the defense.

So it's not possible to even begin to deal with that motion until this -- I guess my understanding is it's an on-sale bar until Delphi fleshes out what it considers to be the PHC activities which are the predicate for claiming the onsale bar. So until Delphi files that separate paper, I'm going to stay further consideration of PHC's motion to compel discovery of Delphi's genic black box bid documents.

Now, everything I've said on the record now constitutes a ruling, and if necessary, I will have to get this transcript and reduce it to an order because Delphi has some difficulty understanding what the Court says from time to time. So I think everything from now has to be memorialized in orders.

So if either of you have any comments --

MR. HANSEN: Yes -- this is Hansen. I'd like to address several points that you've made.

First, in terms of my specific response, the reason behind it, I understand the Court thinking it was unprofessional, is that it's been a repeated pattern of volumes correspondence exchanges characterizing the Court's orders. It's just not productive. It's just designed to create a manufactured record. We're trying to put a stop to that type of exchange --

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THE COURT: You know, Mr. Hansen --

MR. HANSEN: Yes, your Honor.

THE COURT: The more you -- when you're in a hole, digging will never get you out of it. And that's what you do every time. You have a tendency when I put you down to get yourself further and further down. I said that was an unexceptional letter. It should have been responded to in detail because it was an informal conference that he was trying to put parameters around.

Be that as it may, that's all history. So in the future, you fellows can write letters to each other, don't send me copies. Don't send me copies. It would be inappropriate now to send me copies. Any time you want the Court to know something, you're going to have to file a motion.

MR. HANSEN: May I ask a question about the invalidity paper that you just mentioned?

THE COURT: Yeah.

MR. HANSEN: Okay. At the last conference you rightly pointed out that some of which PHC was seeking here is the subject of expert testimony and there's a particular deadline for the expert's report.

I tried to figure out, is this something we have to do before --

THE COURT: I don't know what you mean by an expert report on the invalidity.

MR. HANSEN: I'm sorry, what is that, your Honor?

THE COURT: I don't understand what you're talking about. I said I want to see in description, in paragraph form, what your invalidity defense consists of. What's the factual predicate? That's all.

MR. HANSEN: Okay.

THE COURT: You know, an invalidity defense -- I take it's the onsale bar; right?

MR. HANSEN: There are some other ones on the primary defense --

THE COURT: All right.

MR. HANSEN: That is way I am concerned about --

THE COURT: Well, an on-sale bar has a factual predicate; does it not?

MR. HANSEN: Yes, it does.

THE COURT: Okay. So outline what you think the facts are.

MR. HANSEN: Okay.

THE COURT: What else?

MR. HANSEN: I think that does it, your Honor.

I have no further questions.

THE COURT: Mr. McLaren, do you have anything?

MR. McLAREN: No, sir, your Honor. Thank you, very much.

THE COURT: Now, is it going to be necessary for me to memorialize my ruling in this transcript by an order?

MR. McLAREN: I'll order the transcript, your Honor.

THE COURT: Well, the question is: Do I have to also issue a formal order, or do you think --

MR. McLAREN: As far as we're concerned, the transcript will stand.

MR. HANSEN: Yes, your Honor, we agree.

THE COURT: Thank you. All right.

MR. McLAREN: Bye.

MR. HANSEN: Bye.

(Proceeding concluded 12: 45 p.m.)

CERTIFICATE

I, JOAN L. MORGAN, Official Court Reporter for the United States District Court for the Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing proceedings were had in the within entitled and number cause of the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or

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under my direction.

JOAN L. MORGAN, CSR
Official Court Reporter
Detroit, Michigan 48226

Date: _____
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